

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

) **BEFORE THE CHIEF PROCUREMENT OFFICER**

)

DECISION

In the Matter of Protest of:

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CASE No. 2010 - 127

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Savannah River Charters,  
Cruises & Tours

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Francis Marion University  
IFB No. 2067  
Provide Transportation for the  
Athletic Teams of  
Francis Marion University

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POSTING DATE: November 29, 2010

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MAILING DATE: November 29, 2010

)

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Savannah River Charters, Cruises & Tours (Savannah). With this invitation for bids (IFB), Francis Marion University (FMU) attempts to procure charter bus transportation for its athletic teams. After soliciting bids, FMU posted an intent to award to Sunshine Travel on August 9, 2010. Savannah filed its protest of the intent to award August 14, 2010 alleging the following:

- 1) "the name of the awarded company had been changed from Sunshine Travel to SUNSHINE, INC. of the same address";
- 2) "the South Carolina Procurement Office does not have a SUNSHINE TRAVEL registered in their records as an agency authorized to bid on MMO solicitations";
- 3) "once a bid has been awarded under a specific company name, it cannot be renamed";
- 4) "SUNSHINE TRAVEL is not register [sic] in the State of South Carolina"; and
- 5) "(t)his company also does not qualify as a MINORITY BUSINESS under the state of South Carolina Governor's Office as a minority business under the name of Sunshine Travel or Sunshine Inc."

Savannah filed an amended protest on August 20, 2010 adding the following allegation:

- 6) "the awarded company (Sunshine Inc., a/k/a Sunshine Travel) is not eligible to bid due to its noncompliance with Section VII, Terms and Conditions –B. Special, "Licenses and Permits" of solicitation No. IFB-2067."

On August 24, 2010, Savannah filed a second amendment to its protest alleging as follows:

7) “the awarded contractor does not comply with the “Responsibility” requirements of S.C. Code Ann. Regs. 19-445, 2125(A)(4) (qualified legally to contract with the state). These faults rendered Sunshine’s bid nonresponsive”; and

8) “Sunshine claimed Resident Vendor status under S.C. Code Ann. Section 11-35-1524(A)(6) it is not entitled to claim.”

In order to resolve the matter, the CPO conducted a hearing November 17, 2010. Appearing before the CPO were Savannah, represented by Alex Shissias, Esq.; Sunshine Travel and Sunshine, Inc. (hereafter referred to as Sunshine unless otherwise noted), represented by Shirley Howie; and FMU, represented by Eric Garris, Procurement Director. During the hearing, Savannah withdrew protest issue #5 that alleged Sunshine did not qualify as a minority business. The hearing proceeded regarding all of the other allegations.

### **NATURE OF PROTEST**

The letter of protest and the amendments are attached and incorporated herein by reference.

### **FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On July 15, 2010, FMU issued the IFB. [Ex. 2]
2. On July 23, 2010, FMU issued Amendment #1. [Ex. 3]
3. On July 30, 2010, FMU issued Amendment #2. [Ex. 4]
4. On August 6, 2010, FMU opened the following bids.

<u>Bidder</u>	<u>Bid Amount</u>
Sunshine	\$59,294
Heavenly Journeys	59,575

Savannah	61,253
Brooks Transit	67,179
Green's Travel Coach	70,985
Lancaster Tours	81,115
[Ex. 6]	

FMU applied the resident vendor preferences requested by the bidders resulting in the following bid comparison:

<u>Bidder</u>	<u>Adjusted Bid Amount</u>
Sunshine	\$55,143.42
Savannah	56,965.29
Heavenly Journeys	59,575.00
Green's Travel Coach	66,016.05
Brooks Transit	67,179.00
Lancaster Tours	81,115.00
[Ex. 6]	

5. On August 9, 2010, FMU posted an intent to award to Sunshine Travel. [Ex. 7]
6. On the same date, FMU revised its intent to award to Sunshine, Inc. [Ex. 8]
7. On August 14, 2010, Savannah filed its original protest.
8. FMU suspended the intent to award on August 18, 2010. [Ex. 9]

### **CONCLUSIONS OF LAW**

In protest issues #4 and #7, Savannah alleged that Sunshine is not registered in the State of South Carolina, and therefore it is not a responsible vendor because it is not qualified legally to contract with the State. At the hearing, Savannah presented evidence that the South Carolina Secretary of State administratively dissolved Sunshine, Inc. pursuant to Section 33-14-200 of the South Carolina Code of Laws for failure to file its annual report and/or failure to pay its franchise tax or income tax. [Ex. 1] Specifically, Savannah introduced a certified statement from Mark Hammond, the South Carolina Secretary of State, which indicated that Sunshine, Inc. had registered with his office in the

name of Sunshine, Inc. on August 17, 1999, but that it was dissolved administratively by forfeiture on April 30, 2008. [Ex. 1]

Ms. Howie of Sunshine testified that she was not denying (the allegation) and Sunshine was “guilty as charged.” Although she argued that her accountant had filed tax return extensions for 2008 and 2009 and that Sunshine has paid the penalties, she acknowledged that Sunshine’s state and federal taxes still have not been paid. She also admitted that Sunshine Travel and Sunshine, Inc. are the same business.<sup>1</sup> In summary, she agreed that the corporate charter for Sunshine, Inc. a/k/a Sunshine Travel had been administratively dissolved, acknowledged that neither was reinstated at the time of the bid, and agreed that both Sunshine Travel and Sunshine Inc. are presently dissolved.

An administrative dissolution is involuntary. BLACK’S LAW DICTIONARY 506-07 (8<sup>th</sup> ed. 2004). Under South Carolina law, an administrative dissolution does not terminate the corporation’s legal existence, but the effect of the dissolution is that the corporation may not carry on any business except that necessary to wind up and liquidate its business and affairs. S.C. Code Ann. Section 33-14-210(d). Accordingly, a corporation that has been administratively dissolved cannot be granted a new contract under South Carolina law.

Section 11-35-1520(10) of the South Carolina Consolidated Procurement Code (Code) requires an award of a State contract be made to the lowest responsive and responsible bidder. The Code defines a responsible bidder as “a person who has the capability in all respects to perform fully the contract requirements...” S.C. Code Ann. Section 11-35-1410(6). A procurement manager has an obligation to determine responsibility prior to award. S.C. Code Ann. § 11-35-1810(1). Pursuant to Regulation 19-445.2125(A)(4), one of the factors to be considered in determining if a prospective

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<sup>1</sup> Ms. Howie submitted her bid in the name of Sunshine Travel and indicated it was a “Corporate entity (not tax exempt)” [Ex. 5, p.1]. The CPO further notes that a W-9 Form, Request for Taxpayer Identification Number and Certification, attached to Sunshine’s bid identifies the bidder as Sunshine, Inc. while a Certificate of Liability Insurance form submitted

contractor is responsible is whether the contractor is qualified legally to contract with the State. A procurement manager's decision regarding responsibility is a matter of discretion that will only be overturned when it is shown to be "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. Section 11-35-2410(A); See also, Protest of CollegeSource, Inc., Case No. 2008-4 (the South Carolina Procurement Review Panel found that a procurement manager's responsibility determination is valid unless clearly erroneous, arbitrary, capricious, or contrary to law).

The CPO finds that Savannah proved that Sunshine was administratively dissolved at the time of its bid. Since the law does not permit an administratively dissolved corporation to enter into a contract, the CPO concludes that neither Sunshine, Inc. nor Sunshine Travel is legally qualified to contract with the State. Accordingly, FMU's determination that Sunshine was a responsible bidder is contrary to law.

Moreover, Savannah also alleged in protest issue #8 that Sunshine improperly claimed the resident contractor preference. Specifically, the record indicates that Sunshine Travel requested in-state contractor preference under S.C. Code Ann. Section 11-35-1524 and indicated its home office address as 1315 Camp Dr., Lancaster, SC 29720 and its mailing address of PO Box 1164, Lancaster, SC 29721. [Ex. 5, p. 2 and 3]

The Code reads, in pertinent part,

When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; (ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or

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by Sunshine identifies the insured as Sunshine Express. [Ex. 5] Ms. Howie also indicated Sunshine Express is also the same as the other two.

processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of bidder's total bid price. Section 11-35-1524(C)(1)).

In order to qualify for the preference, the Code specifies:

(E)(1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

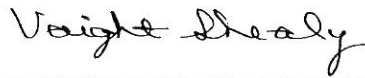
(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue. Section 11-35-1524(E)(1))

According to Ms. Howie, Sunshine has not paid its income taxes assessed by the state of South Carolina for 2008 or 2009. Further, as established above, Sunshine is not registered with the South Carolina Secretary of State because it was administratively dissolved. Therefore, Sunshine was ineligible for the preference at the time it submitted its bid because it did not meet either of the requirements of Section 11-35-1524(E)(1). In this case, the application of the preference to Sunshine's bid determined the award; without the preference Sunshine would not have been the lowest bidder. Therefore, the CPO also finds that the award to Sunshine was invalid because Sunshine was not eligible to receive the preference.

## DETERMINATION

Based on the reasoning above, Savannah proved by a preponderance of the evidence its allegations in #4 and #7 that Sunshine was administratively dissolved at the time of the bid and was therefore not a responsible bidder. Further, Savannah also proved that Sunshine improperly claimed the resident vendor preference. Therefore, the protest is granted, and FMU's intent to award to Sunshine is vacated. Accordingly, the procurement is remanded to FMU to award to the lowest responsive and responsible bidder in accordance with the Code and the Regulations.<sup>2</sup>



R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

November 29, 2010

Date

Columbia, S.C.

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<sup>2</sup> With this ruling, the remaining issues of protest are rendered moot.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised October 2010)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



## *Savannah River Charters, Cruises, & Tours*

Choose to Cruise

5469 JEFFERSON DAVIS HIGHWAY - NORTH AUGUSTA, SC 29842

(803) 202-1009 - Toll Free 800-750-7287 - Fax (803) 202-7090

Web Page: <http://www.savrivcharters.net> - E-Mail: [savrivch@bellsouth.net](mailto:savrivch@bellsouth.net)

August 14, 2010

CHIEF PROCUREMENT OFFICER  
MATERIALS MANAGEMENT OFFICE  
1201 MAIN STREET, SUITE 600  
COLUMBIA, SC 29201

Dear Sir:


Please consider this a protest of the INTENT TO AWARD, IFB-2067, PROVIDE TRANSPORTATION FOR THE ATHLETIC TEAMS OF FRANCIS MARION UNIVERSITY, ISSUED 07/15/10.

My reason for the protest is as follows:

Originally the Intent Award/IFB-2067/Provide Transportation for the Athletic Teams of Francis Marion University was awarded to SUNSHINE TRAVEL, PO BOX 1164, LANCASTER, SC 29721. After reviewing the awarding bid information it was found that the name of the awarded company had been changed from Sunshine Travel to SUNSHINE, INC. of the same address. Additionally, the South Carolina Procurement Office does not have a SUNSHINE TRAVEL registered in their records as an agency authorized to bid on MMO Solicitations (Vendor Registration Mandatory, Jan 2006). It is my understanding that once a bid has been awarded under a specific company name, it cannot be renamed based on the same bid. Furthermore, this company as SUNSHINE TRAVEL is not registered in the State of South Carolina. This company also does not qualify as a MINORITY BUSINESS under the state of South Carolina Governor's office as a minority business under the name of Sunshine Travel or Sunshine Inc.

I am requesting that a hearing be held in reference to this award.

Thank you,

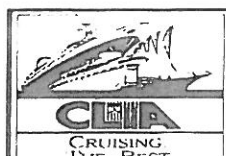


Orlando Hamlett Sr.

*"We'll take you there"*

Savannah River Charters & Tours, Inc.  
5469 Jefferson Davis Highway  
North Augusta, SC 29842  
Local Direct: 803-202-1009  
Toll Free: 800-750-7287  
Fax: 803-202-7090

[olandohamlettsr@bellsouth.net](mailto:olandohamlettsr@bellsouth.net)  
[www.savannahrivercharters.net](http://www.savannahrivercharters.net)



Haynsworth  
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)  
POST OFFICE BOX 11889 (29211-1889)  
COLUMBIA, SOUTH CAROLINA  
TELEPHONE 803.779.3080  
FACSIMILE 803.765.1243  
WEBSITE [www.hsblawfirm.com](http://www.hsblawfirm.com)

ALEXANDER G. SHISSIAS  
DIRECT DIAL NUMBER 803.540.7962  
EMAIL [ashissias@hsblawfirm.com](mailto:ashissias@hsblawfirm.com)

August 20, 2010

**VIA HAND DELIVERY**

Mr. R. Voight Shealy  
Chief Procurement Officer for Goods and Services  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Re: Protest of Solicitation No. IFB-2067, Francis Marion University, Provide  
Transportation for the Athletic Teams of Francis Marion University, filed by Savannah  
River Charters & Tours, Inc. on August 14, 2010

HSB file # 33248.0002

Dear Mr. Shealy:

The firm represents Savannah River Charters & Tours, Inc. (Savannah) in connection with the above matter. In addition to the grounds stated by Mr. Olando Hamlett in his protest letter Savannah also raises as grounds for protest that the awarded company (Sunshine Inc., a/k/a Sunshine Travel) is not eligible to bid due to its noncompliance with Section VII., Terms and Conditions—B. Special, “Licensing and Permits,” of solicitation No. IFB-2067. Sunshine Inc. is ineligible to bid on solicitations from the State of South Carolina.

Pursuant to the South Carolina Freedom of Information Act, I respectfully request the opportunity to review your files for the following documents:

1. All documents filed with Francis Marion University by the awarded company relating to its bid.
2. All documents relied upon by Francis Marion University in making its award.

Savannah reserves the right to assert additional issues as may be ascertained when additional materials are produced subject to the Freedom of Information Act.

Haynsworth  
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

R. Voight Shealy  
August 20, 2010  
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Yours very truly,

A handwritten signature in cursive script, appearing to read "Alex Shissias".

Alexander G. Shissias

cc: Sunshine Inc. (Sunshine Travel)  
P.O. BOX 1164  
LANCASTER, SC 29721  
Attn: Ms. Shirley B. Howie

Haynsworth  
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)  
POST OFFICE BOX 11889 (29211-1889)  
COLUMBIA, SOUTH CAROLINA  
TELEPHONE 803.779.3080  
FACSIMILE 803.765.1243  
WEBSITE [www.hsblawfirm.com](http://www.hsblawfirm.com)

ALEXANDER G. SHISSIAS  
DIRECT DIAL NUMBER 803.540.7962  
EMAIL [ashissias@hsblawfirm.com](mailto:ashissias@hsblawfirm.com)

August 24, 2010

**VIA HAND DELIVERY**

Mr. R. Voight Shealy  
Chief Procurement Officer for Goods and Services  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

Re: Protest of Solicitation No. IFB-2067, Francis Marion University, Provide  
Transportation for the Athletic Teams of Francis Marion University, filed by Savannah  
River Charters & Tours, Inc. on August 14, 2010

HSB file # 33248.0002

Dear Mr. Shealy:

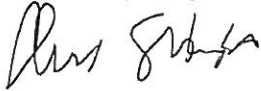
The firm represents Savannah River Charters & Tours, Inc. (Savannah) in connection with the above matter.

In addition to my prior letter of August 20, 2010, stating additional grounds for protest, I would like to take this opportunity to clarify my client's original grounds for protest. In my client's August 15, 2010 protest, he discussed the awarded company not being registered as a minority business under the state of South Carolina, and the existence of other problems associated with Sunshine Travel/Sunshine, Inc., bid. In my letter of August 20, 2010, I clarified that we were adding as a ground for protest the ground that Sunshine is generally ineligible to bid on contracts with the State of South Carolina. In addition, we are raising as a ground that the awarded contractor does not comply with the "Responsibility" requirements of S.C. Code Ann. Regs. 19-445.2125(A) (4) (qualified legally to contract with the state). These faults rendered Sunshine's bid nonresponsive. Additionally, to the extent that Sunshine claimed Resident Vendor status under S.C. Code Ann. §11-35-1524(A)(6) it is not entitled to claim such status.

R. Voight Shealy  
August 24, 2010  
Page 2

We request that the CPO provide relief, specifically that it invalidate Sunshine's bid, and award the contract to the next responsive bidder, or in the alternative place the solicitation out for rebid. Under S.C. Code Ann. 11-35-4210(2)(b), this amendment is timely, as the Notice of Intent to award was posted on August 9, 2010.

Yours very truly,



Alexander G. Shissias

cc: Sunshine Inc. (Sunshine Travel)  
P.O. BOX 1164  
LANCASTER, SC 29721  
Attn: Ms. Shirley B. Howie